Editor's note: Reconsideration granted; decision vacated -- See 66 IBLA 178 (Aug. 12, 1982)

CLIFF MEZEY

IBLA 80-396 Decided September 30, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offer C-28732 Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

   Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Cliff Mezey (appellant) filed a drawing entry card (DEC) for parcel No. CO-393 in the public drawing for simultaneously filed noncompetitive oil and gas lease offers held in July 1979 by the Colorado State Office, Bureau of Land Management (BLM). In the drawing, Mezey's offer was drawn with first priority. Mezey's DEC bore a rubber-stamped facsimile of his signature and was accompanied by statements by him and the Stewart Capital Corporation (Stewart). Mezey's statement indicates, in part, as follows:

> I have contracted with Stewart Capital Corporation to perform the following functions: affix my signature by means of rubber stamp or other facsimile to offering cards and this statement (which facsimile signatures shall be deemed mine for all purposes); supply me with the benefit of a ranking of the lease parcels available each month under the simultaneous program; prepare a set number of offering cards on my behalf for a set number of months; file such offering cards on the ranked parcels available each month during the life of my contract; advise me of any winning leases obtained under the program; advance any rental payments due on winning leases and bill me therefor immediately.
>
> Neither Stewart Capital Corporation nor any other person or organization not named on my offering card has any interest in my offering. No agreement nor understanding exists between me and Stewart Capital Corporation or any other person not named on the offering card, either oral or written, by which Stewart Capital Corporation or such other person has received, or is to receive any interest in a lease if issued as a result of this filing, including royalty interest or interest in any operating agreement. I do, of course, preserve the right, after filing this offer, to create a contract of assignment or sale of my interest in this offer, to any qualified person or organization. [Emphasis supplied.]

On September 10, 1979, BLM issued a decision requiring that appellant supply additional evidence. The decision went further to state:

> The information we require must be furnished by filing in this office within thirty (30) days from receipt of this decision one (1) completed copy of the attached "Additional

> Information for Simultaneous Oil and Gas Lease Offer," along with legible copies of any contracts or agreements, and any other pertinent material as specified under Item 5.
>
> Unless the requirements of this decision are met within the time allowed, this offer will be considered finally rejected and closed without further notice.

On September 26, 1979, appellant, through Craig Carver, Esq., filed information in response to this request indicating that all blank spaces on the DEC were completed by Stewart and that Stewart acted as appellant's representative in selecting the parcel in question for him. Appellant also provided a service worksheet and service agreement signed by himself and the President of Melbourne Concept, Inc. (Melbourne), a stranger to the record, which stated in part: "The undersigned ('Client') hereby employs Melbourne Concept Inc., along with others, to appraise, select, and seek to acquire, acreage on oil and natural gas prospects for the estimated acreage at the rates and payment provisions set forth in the accompanying schedule."

On January 29, 1980, BLM issued a decision rejecting appellant's DEC on four grounds. The decision stated:

> On September 26, 1979, we received a letter from Head, Moye, Carver & Ray enclosing a statement of additional evidence signed by Cliff Mezey plus a service worksheet and service agreement between Cliff Mezey and Melbourne Concept Inc. The additional evidence statement as well as a separate attachment indicated that all the blank spaces on the drawing entry card were completed by employees of Stewart Capital Corporation and that the offeror had a written contract with Stewart Capital to act as his filing service.
>
> The offer is rejected as no copy of an agreement with Stewart Capital Corporation has been furnished to this office as required by our earlier decision, if, indeed, Stewart Capital instead of Melbourne Concept Inc., is the agent for Cliff Mezey. D. E. Pack (On Reconsideration), 38 IBLA 23 (1978).
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> If the agent is Melbourne Concept Inc., and not Stewart Capital, the offer would still have to be rejected as no separate statements of interest by Melbourne were filed with the entry card as required by regulation 43 CFR 3102.6-1. Robert C. Leary et al., 27 IBLA 296 (1976). Further, the service worksheet signed by Cliff Mezey and the president of Melbourne Concept Inc., states that the company would receive a consideration derived from the disposition of all

> property acquired by the client as a result of the services. This would be in violation of 43 CFR 3100.0-5(b). Lola I. Doe, 31 IBLA 394 (1977); Sidney H. Schreter et al., 32 IBLA 148 (1977).
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> Regulation 43 CFR 1821.2-2 provides that when a document is required by decision to be filed within a specified period of time, the filing of the document after the expiration of that period cannot be accepted if the right of a third party has intervened. The drawing entry card receiving next priority for parcel CO-393 must now be considered for lease issuance.

Appellant has appealed the decision contending that he complied with 43 CFR 3102.6-1 in filing statements of interest as well as supplying BLM with additional information when requested. In his statement of reasons on appeal appellant specifically asserts that (1) appellant did not contract directly with Stewart and therefore no such agreement could be furnished; (2) Melbourne was not appellant's agent for the purposes of 43 CFR 3102.6-1(a)(2) and therefore not bound to file information required by that regulation; (3) appellant was the sole party in interest in the lease, thereby obviating the need for Melbourne to file a statement as required by 43 CFR 3100.0-5(b); and (4) following the Board's decision in Rickey L. Gifford, 34 IBLA 160 (1978), 43 CFR 1821.2-2 should not have been applied and appellant, in reliance upon a BLM decision, should have been given 30 days to submit the required information.

[1] The primary reason for BLM's rejection of appellant's offer was his failure to comply with 43 CFR 3102.6-1. The pertinent section of the regulation provides in part:

> If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. [Emphasis added.]

Compliance with the cited regulation is required where a signature stamp is used by an agent. D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978).

The use of an agent or attorney-in-fact was not precluded by the regulations in effect when appellant's offer was filed. See, e.g., Robert C. Leary, 27 IBLA 296 (1976); Evelyn Chambers, 27 IBLA 317 (1976); Mary Arata, 4 IBLA 201, 78 I.D. 397 (1971). However, offerors and their agents must comply totally with the regulation.

The novel question presented in this case concerns the application of regulation 43 CFR 3102.6-1(a)(2) to the situation where two agency relationships have been created. Appellant's agreement was clearly with Melbourne Concept, but that agreement permitted Melbourne to use the services of others "to appraise, select and seek to acquire, acreage on oil and natural gas prospects." Melbourne in turn contracted with Stewart Capital to perform those services. As appellant seems to admit, Melbourne was in the role of a general contractor who used Stewart, an agent, to perform the service for appellant. Appellant also now claims that he had no contract with Stewart and thus could not submit a contract between himself and Stewart as the BLM Office had requested. This proves there was no novation of appellant's contract with Melbourne by a substitution of Stewart for Melbourne. Thus, Melbourne's contractual and agency relationship with appellant continued. Melbourne was appellant's primary agent and the affixing of appellant's signature by Stewart by use of a rubber stamp was at the direction and in accordance with Melbourne's contract with Stewart.

The clear purpose and intent of the regulations is to assure that the agency relationships are revealed, that they show the agent has the authority from the offeror, and that there is no violation of the regulations requiring disclosure of other interests and of preventing the filing of multiple offers in simultaneous filings. If appellant's arguments were to be accepted, none of these purposes and clear intent of the regulations could be achieved. Simply by the expediency of having an in-between agency relationship with a third party, some of the safeguards established in the regulations could be avoided. One of those safeguards is requiring the agent who signs the offer to file the separate statement required by 43 CFR 3102.6-1. The information accompanying the appeal was not sufficient. Stewart's and appellant's statements indicated appellant had a contract with Stewart. This appellant now denies, explaining the contract was with Melbourne. The regulation obviously requires the showing of authority for the agent to sign for the offeror. It is clear from this appeal that Stewart had no direct authority from the offeror. Its authority was from its own contract with Melbourne. Thus, when the offer was filed there was no correct showing of the authority of the agent to sign for appellant. The statements submitted were actually misleading. To supply the necessary agency and contractual authority in this type of case where the primary agent has contracted with another agent to perform the services, the complete chain of agency-contract authority and

relationships must be shown when the offer is filed. There is no ambiguity in the regulation. The purpose is clear. There should have been statements by Melbourne, Stewart, and appellant setting forth the true agency relationships and the nature of the contracts between them. We agree with BLM that the regulation was not satisfactorily complied with in these circumstances.

BLM properly rejected appellant's lease offer for the above-stated reason, and we need not consider BLM's other reasons for rejection.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

I do not agree that Melbourne was required to file with the offer a statement making the showings required by 43 CFR 3102.6-1, quoted, supra. There is no language in the regulation which requires the filing by anyone other than the agent who signs the offer and the offeror. Required information is to be furnished by the offeror and the signing agent, and any necessary further data may be obtained by BLM through such means as the form "Additional Information for Simultaneous Oil and Gas Lease Offer." It is not proper Departmental policy to deny a first drawn applicant his preference right to an oil and gas lease on the basis of a regulation which does not clearly require that result. Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979); A. M. Shaffer, 73 I.D. 293 (1966).

Joseph W. Goss
Administrative Judge